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October 26, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

**Re: Western Wireless Corporation Comments in
Access Charge Reform, CC Docket No. 96-262, Price Cap
Performance Review for Local Exchange Carriers,
CC Docket No. 94-1, Interconnection Between Local
Exchange Carriers and Commercial Mobile Radio Service
Providers, CC Docket No. 96-262, and Consumer
Federation of America Petition for Rulemaking, RM-9210**

Dear Ms. Salas:

On behalf of Western Wireless Corporation, I am enclosing for filing Comments in the proceedings referred to above. These Comments are filed in response to the Commission's Public Notice FCC 98-256 (released October 5, 1998) seeking to refresh the record in these proceedings, and as an *ex parte* filing in CC Docket No. 95-185.

If you have any questions regarding this matter, please contact me.

Respectfully submitted,



David L. Sieradzki
Counsel for Western Wireless Corp.

Enclosures

cc: Jane Jackson
Tamara Preiss
ITS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matters of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review for)	CC Docket No. 94-1
Local Exchange Carriers)	
)	
Interconnection Between)	CC Docket No. 96-262
Local Exchange Carriers and)	
Commercial Mobile Radio)	
Service Providers)	
)	
Consumer Federation of America,)	RM-9210
<i>et al.</i> , Petition for Rulemaking)	
)	

COMMENTS OF WESTERN WIRELESS CORPORATION

Western Wireless Corporation ("Western Wireless"), by its attorneys, hereby submits its Comments in response to the Commission's Public Notice, FCC 98-256, *Commission Asks Parties to Update and Refresh Record for Access Charge Reform and Seeks Comment on Proposals for Access Charge Reform Pricing Flexibility*, released October 5, 1998 ("Public Notice").

Access charge reform presents an opportunity for the Commission to remove historical barriers to competition, such as excessive access charges that are unrelated to costs and the inability of Commercial Mobile Radio Service ("CMRS") providers to assess access charges for originating and terminating long distance

traffic. Western Wireless urges the Commission to establish cost-based access charges and permit CMRS providers to establish access charges for the origination and termination of long distance traffic.

Western Wireless provides cellular and personal communications service ("PCS") to more than 700,000 subscribers under licenses in 22 states, covering over 60 percent of the continental United States, as well as Hawaii. Based upon its experience in providing wireless services to the public, Western Wireless firmly believes that changes need to take place in order for wireless providers to become a true competitor to wireline carriers. First, wireless carriers must be able to interconnect with incumbent local exchange carriers ("ILECs") at cost-based rates. In September 1996, Western Wireless became the first CMRS provider in the nation to seek state commission enforcement of the interconnection requirements of the Telecommunications Act of 1996. Western Wireless was successful in its efforts to establish cost-based interconnection rates, but still faces discriminatory practices by certain ILECs, which it may be forced to bring to the attention of the Commission if state commissions do not address the problems. Second, federal and state universal service support programs must establish a competitively neutral system for distributing support to any carrier that provides universal service. Lastly, access charges must reflect the cost of originating and termination traffic. All carriers, including CMRS providers, that choose to impose access charges for originating and terminating long distance traffic must not be foreclosed from doing so.

The Unavailability of Implicit Subsidies in Access Charges to CMRS Carriers Constitutes a Barrier To Entry.

Western Wireless welcomes the Commission's renewed examination of the relationship between access charge reform and local exchange competition. Western Wireless believes that the Commission must take this opportunity to act rapidly and assertively to remove the remaining barriers to local competitive entry. ^{1/} To the extent that the existing access charge system gives ILECs substantial implicit universal service subsidies that new entrants cannot receive, that system constitutes a major barrier to entry. This is particularly so in rural and high-cost areas, where new entrants cannot hope to compete with the ILECs without a competitively neutral system of universal service support.

CMRS providers, such as Western Wireless, are emerging as the most likely competitors to ILECs in rural and high-cost areas. But CMRS providers' ability to compete is hampered by the Commission's access charge policies. CMRS

^{1/} In the universal service proceeding, Western Wireless is arguing for a number of measures that would advance the overall policy goal of *technological and competitive neutrality* in the system for supporting universal service in high-cost and rural areas. The Commission and the Joint Board already have endorsed this goal. *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, 8858, 8932, ¶¶ 145, 287 (1997), *pet. for review pending*. Western Wireless has argued that, to achieve this goal, the Commission must ensure, first, that consumers in high-cost and rural areas have the right to choose to obtain supported services from CMRS providers and other new entrants as well as from ILECs. Second, there must be parity between the revenue support available to all eligible telecommunications carriers, regardless of those carriers' technologies, rate structures, or regulatory status. *See Western Wireless Petition for Clarification or Rulemaking* in CC Docket No. 96-45, in the Matter of Federal-State Joint Board on Universal Service, filed October 15, 1998. Third, support must be available for mobile, as well as stationary, services that meet the Commission's definitions of supported universal service, and for wireless as well as wireline local loops.

providers generally do not receive any interstate access charges, and (as discussed below) it is unclear under the Commission's rules whether they are entitled, or even permitted, to collect such charges.

As a result, wireless carriers are frozen out of entering local markets, in two respects. First, even if they obtain certification as eligible telecommunications carriers ("ETCs") under Section 214(e) of the Act, they can receive only the relatively limited *explicit* universal service high-cost support currently available, and cannot receive any of the *implicit* support that ILECs receive. And second, CMRS carriers cannot even replace those missing implicit support flows (at least in part) by recovering interstate access charges from interexchange carriers ("IXCs") (or from ILECs when they collaborate to provide access service), as wireline CLECs can and do.

In this context, the Commission cannot rely primarily on local competition to drive ILEC access charges toward cost, 2/ given that the access charge system itself poses a barrier to local competition. The fact that the implicit universal service subsidies embedded in access rates are available to ILECs, but not their prospective CMRS competitors, is a major impediment to the development of vigorous local competition, especially in rural and high-cost areas. It is notable that, according to the Rural Utilities Service, access charges constitute approximately 64% of the revenues of the small, rural ILECs to which they lend

2/ *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 16094-98, ¶¶ 262-70 (1997) ("*Access Charge Reform 1st R&O*").

money at preferential rates. ^{3/} Western Wireless believes it would be optimal for the Commission to rapidly eliminate the implicit subsidies from ILEC access charges, by prescribing access charges to forward-looking economic cost.

In addition – as well as during the interim period before such a prescription is carried out – it is critical that the Commission take action to ensure that all carriers, including CMRS providers, have access to the implicit support flows embedded in access charges. As discussed below, the Commission should take immediate action on a Notice of Proposed Rulemaking that has been pending for almost three years with no action ^{4/} to give CMRS providers the same treatment as other local competitors with respect to access charges.

^{3/} U.S.D.A. Rural Utilities Service 1997 Statistical Report on Rural Telephone Borrowers at Chart 2.

^{4/} *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 5020 (1996) (“*LEC/CMRS Interconnection NPRM*”). In particular, Section IV of that Notice, entitled “Interconnection for the Origination and Termination of Interstate Interexchange Traffic,” *Id.* at 5074-76, ¶¶ 115-117, has been pending without action since January 1996. The Commission’s *Local Competition Order* was adopted based in part on the record from the remaining sections of that NPRM, but did not address the issues raised in Section IV. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) (“*Local Competition Order*”), reversed in part sub nom. *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), U.S. Supreme Court review pending.

The Commission's LEC/CMRS Interconnection NPRM
Proposed A Solution to the Problem

In the *LEC/CMRS Interconnection NPRM*, the Commission observed that, while it had determined long ago that CMRS carriers are not required to pay access charges to the ILECs, it never addressed the issue of "whether LECs or IXC's should remit any interstate access charges to CMRS providers." ^{5/} The Commission proposed to answer this question with the following tentative conclusions:

- "CMRS providers should be entitled to recover access charges from IXC's, as the LECs do, when interstate interexchange traffic passes from CMRS customers to IXC's (or vice versa) via LEC networks." ^{6/}
- "CMRS providers [should] be treated no less favorably than neighboring LECs or CAPs with respect to recovery of access charges from IXC's and LECs for interstate interexchange traffic." ^{7/}
- "[A]ny less favorable treatment of CMRS providers would be unreasonably discriminatory" ^{8/}

Wireline LECs (including CLECs as well as ILECs) have long been entitled to receive compensation from IXC's for originating and terminating traffic -- known as access charges -- because IXC's cannot serve their customers without the ILEC local network over which calls carried by IXC's originate or terminate. ^{9/} But Western Wireless, and to the best of our knowledge, most other CMRS providers, do

^{5/} *LEC/CMRS Interconnection NPRM*, 11 FCC Rcd at 5074, ¶ 115.

^{6/} *Id.* at 5075, ¶ 116.

^{7/} *Id.*

^{8/} *Id.*

^{9/} *Access Charge Reform 1st R&O* at 15990-07, ¶¶ 17-21.

not receive any access charge revenue. As the CMRS industry has grown, however, more and more interexchange calls originate and/or terminate on CMRS systems. 10/ As a result, IXC's are deriving the same benefit from terminating and originating traffic on CMRS systems as they do from relying on the ILEC's' local networks for that function. In fact, CMRS providers are establishing calling plans and other products and services that allow mobile phones to function (and be priced) more and more similarly to their wireline counterparts. IXC's, however, are enjoying the benefits of this evolution without compensating CMRS providers by paying access charges as they do to ILEC's. 11/

Notwithstanding the Commission's recognition that this situation appears to be "unreasonably discriminatory, and . . . interfere[s] with [the] statutory objective . . . to foster development of new wireless services," 12/ it has been nearly three full years since the adoption of the *LEC/CMRS Interconnection NPRM*. CMRS providers still do not collect access charges for originating and terminating

10/ *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Third Report, FCC 98-91, rel. June 11, 1998, at 2-4.

11/ In situations where three carriers are involved -- for example, an IXC terminating a call to an ILEC, which hands the call for completion to a CMRS carrier -- either the IXC or the ILEC appears to be getting something for nothing. In some cases the IXC may be paying the full access charge to the ILEC, even though the ILEC only performs a transiting function, and the ILEC fails to share the access revenue with the CMRS (as it would with a neighboring ILEC or CLEC). In other cases, the IXC may be paying only a transiting charge to the ILEC and paying nothing to the CMRS provider for terminating the traffic. In either case, the CMRS is deprived of the access charge that it ought to receive.

12/ *Id.* at 5075, ¶ 116.

IXC traffic. This places CMRS providers at a significant competitive disadvantage as they begin to attempt to capture customers served by LECs which once enjoyed monopoly status for basic telephone services. In order for CMRS providers to continue to evolve into full local competitors, they must be able to assess and collect access charges when they provide access service -- either independently or jointly with an ILEC. Any other result would be unnecessarily and unlawfully discriminatory. This is particularly true given that a substantial portion of implicit universal service subsidies are embedded in interstate access charges. Until the Commission develops a mechanism for making these subsidies explicit and portable, ILECs should not be the sole recipients of these subsidies. To the extent that CMRS systems are providing the same function for IXC traffic as ILEC local networks, CMRS providers should be compensated in the same manner.

Permissive Tariffing

As the Commission recognized in the *LEC/CMRS Interconnection NPRM*, one of the key stumbling blocks on the road to CMRS collection of access charges may be the lack of a mechanism by which CMRS providers can enforce the collection of access charges from IXCs. ^{13/} The LECs collect access charges pursuant to binding tariffs filed with the Commission; but CMRS providers are *barred* from filing tariffs of any kind, including access tariffs, under a so-called

^{13/} NPRM at 5075-76, ¶ 117.

“mandatory forbearance” policy. ^{14/} It is notable that even when the Commission adopted that policy, it recognized that it may need to modify the policy to allow for permissive tariffing by CMRS providers under certain circumstances, particularly in the context of interconnection developments and interstate access charges. ^{15/} It is therefore apparent, as the Commission recognized early on, that there is a need to create a mechanism by which CMRS providers can collect access charges.

Western Wireless submits that the Commission should allow (but not require) CMRS providers to file access tariffs to provide for the collection of access charges from IXCs. This will allow CMRS providers to stand on equal footing with LECs to the extent they provide the same functions to IXCs as do the LECs, and it will advance the Commission’s objectives of technological neutrality and fostering entry of new providers into the market for basic telecommunications services.

^{14/} *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1480, ¶ 179 (1994).

^{15/} *Id.* (“We recognize, however, that there may be other public interest factors that would make forbearance *with respect to interstate access service* inappropriate.”) (emphasis added).

Conclusion

For the reasons stated above, the Commission should expeditiously adopt its tentative conclusion in the *LEC/CMRS Interconnection NPRM* that CMRS providers should be entitled to recover access charges, and should allow for permissive filing of CMRS access tariffs to accomplish this goal.

Respectfully submitted,

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